

CMA Guidance  
**Annual Fee  
Increases**



## How This Document is Formatted

The model clauses must be individualised by the provider before they are put into use as follows:

### 1. Model clause

The text to be inserted into your contract is bordered by a straight, black line. The text sitting without of that box is explanatory guidance to determine how to choose once Example clause over another or how to edit text which needs to be amended.

### 2. Text which needs to be amended

Where the provider needs to insert or amend the text, or choose from two or more options, the appropriate text is enclosed within square brackets, and highlighted yellow. Where you have an option highlighted blue, you will need to calculate a number based on upon the figures you have entered earlier in the clause (in those sections highlighted yellow). All square brackets and highlighting should be removed before the model clause is put into use

### 3. Optional and alternative clauses

Where a clause is optional, or where different versions of the same clause need to be selected, the clauses are titled "Example 1", "Example "2" and so on. These are accompanied by explanatory guidance. The model clauses are applicable regardless of the example clauses you have selected.

# Introduction

One of the biggest challenges for care providers is ensuring you can continue to cover your costs and re-invest in your services so that your services remain sustainable.

Historically, care providers would do this by increasing fees by a “reasonable” amount, ensuring that any cost increases were “cost reflective” or limited to “unexpected changes”. Despite best intentions, the Competition and Markets Authority (“CMA”) has criticised this method because the average resident is not able to predict your costs or how you will react to your costs increasing in terms of passing them on to residents in the fees.

Rather than remove your ability to carry out an annual review, the CMA has set out guidance which explains you can continue to review fees on an annual basis, provided this does not occur more than once a year and that you are clear about how you calculate the increase.

The following clauses and explanatory notes are based on the Competition and Market Authority’s “Guidance for care homes: consumer law advice for providers”. The full guidance is available here <https://www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers> and the relevant section is “varying your terms or your service (including changes to fees)” on **page 67** onwards.

Ideally, residents should be able to calculate (from the information you provide) the projected cost of their fees over several years. That way, they can determine whether they have the budget to stay at your home in the long-term. You will need to decide whether you:

- are prepared to fix the fees or fix any in the increase amount of the fees. Such terms are more ‘reasonable’ and therefore easier to enforce. If the fees do not keep up with increased costs, you could still seek higher rates new residents to spread the risk; or
- want to offer consistent fees to all your residents, in which case you will want a fee review mechanism that enables you to increase the fees and adapt to external market pressures. These terms are harder to make reasonable but can be included provided the method of calculation is sufficiently clear to residents, who will not have any knowledge of how your fees are calculated.

## Previous practice:

providers looked at how much costs have increased over the last 12 months, estimated the cost increases that were likely to take place over the next 12 months and implemented a percentage or fixed price increase which reasonably reflected those actual or predicted costs (including some allowance for maintaining surplus for re-investment and/or profit margins).

You should remove terms which give you the ability to apply a service-wide increase more than once a year or give you a wide discretion when calculating the increase. For example, you should remove or update terms such as:

- “Your fees will be reviewed annually and will be increased by no more than 10%.”
- “Fees will be increased from time to time and calculated based on any reasonable increase in our costs.”
- “Any general review of your fees, including the annual review, will take account of local market conditions, the wider national economic picture and any unforeseen or unexpected costs that have arisen since the time of the previous review.”

## Now:

provide transparency and certainty about the cost of the services over the likely lifetime of the contract. Enable residents to project the cost of their fees over a number of years.

Following are example clauses which are designed to help you demonstrate compliance with consumer law and the Competition and Market Authority’s Guidance in relation to residential care homes.

The examples below are drafted on the basis of weekly fees, although you can make reference to monthly fees if that is how your contract is drafted. You will need to take care that your calculations and illustrative examples are updated to reflect this change from weekly to monthly fees when entering the figures and calculating your notice periods

## Example 1 - Fixed Price for Duration of the Contract

Your Fee is fixed for the length of the contract.

**Example 1** provides the most transparent and (in the eyes of the CMA) the most fair and reasonable type of term. This is because the resident has absolute certainty about the price, regardless of how long they stay at your home.

This is not the choice of most providers because it is inflexible and commits you in the long-term to prices which may not be sustainable, even at the time they are offered, for example if you are offering rooms at a lower rate to increase occupancy at your home. However, you can overcome these difficulties by offering higher rates to new customers. Consumers are familiar with this pricing mechanism as many services are offered at different prices depending upon demand at the time of sale, for example taxi rates on a Saturday night and the prices of flights during the school holidays. You should also consider the average length of stay in your home and the advantages of simplicity when marketing the home.

## Example 2 Increased Each Year Based on a Fixed Amount

Provided there are no changes to your needs or the services you require, your fee is fixed [up to 1st January [next]][up to 1st April [next]][for the first year]. We will review and increase the fee once a year [on the anniversary of this contract][in January][in April] by £[50] per week.

For example, where your fee is £1,000 per week, after [the first year][1st January][1st April] your new fee will be £[1,050] per week. This equates to an increase of £[2,600] over the year.

We will write to you by [DATE] each year to confirm the changes arising from our annual review and the new rates which will apply from [DATE] each year.

This review is separate to any change in your fee which occurs because of a change in your individual care needs.

**Example 2** provides absolute clarity about how the fee will increase over the length of the contract. It allows you to factor in some form of increase, but the amount you apply as the increase is fixed at the point the contract is entered into by reference to a fixed sum.

To make sure this term is deemed to be fair and reasonable, you will need to draw the resident's attention to it and highlight it at the start of your contract. You should also reference it at the first point of contact.

If it turns out this fixed amount increase is insufficient to cover costs, you can overcome these difficulties by offering higher rates to new customers and/or writing a higher increase amount into your contracts with new customers (e.g. increase by a fixed amount of £100 rather than £50). This can place pressure on your managers to keep track of the different sums that apply to different customers.

You should give residents enough notice before the increase takes effect so that they are able to terminate the contract (without penalty) if they do not accept the higher fee. In all cases, you should give residents at least **28** days' notice of the increase.

## Example 3 - Security Deposit

Provided there are no changes to your needs or the services you require, your Fee is fixed [up to 1st January] [up to 1st April][for the first year]. We will review and increase the Fee once a year [on the anniversary of this contract][in January][in April] in line with [Consumer Price Index plus Housing (CPIH)].

For example, where your Fee is £1,000 per week and the [CPIH] for the previous 12 months is 5% then, after [the first year][1st January][1st April] your Fee will increase by £50 per week and your new Fee will be £1,050 per week. This equates to an increase of £2,600 over the year.

You can find a link to recent percentage changes in [CPIH] from the Office of National Statistics at <https://www.ons.gov.uk/> or by asking the Home Manager.

We will write to you by [DATE] to confirm the changes arising from our annual review and the new rates which will apply from [DATE] each year. This review is separate to any change in your Fee which occurs because of a change in your individual care needs.

**Example 3** provides the resident with comfort that the fee increase is reasonable because it is determined by an objective measurement that applies in many industries and with which they're likely to be familiar (e.g. telephone and broadband price increases are also commonly increased by reference to CPI or RPI).

To make sure this term is deemed to be fair and reasonable, you will need to draw the resident's attention to it and highlight it at the start of your contract. You should also reference it at the first point of contact.

You should give residents enough notice before the increase takes effect so that they are able to terminate the contract (without penalty) if they do not accept the higher fee. In all cases, you should give residents at least 28 days' notice of the increase.

## Example 4 - Increased Each Year Based on Multiple Indices (Weighted Averaging)

Provided there are no changes to your needs or the services you require, your Fee is fixed [up to 1st January] [up to 1st April] [for the first year]. We will review and increase the Fee once a year [on the anniversary of this contract] [in January] [in April] in line with the following formula:

TYPE OF COST	% OF YOUR TOTAL FEE	HOW WE CALCULATE THE INCREASE
Staff Costs	[65]%	We increase this element of your Fee by the same % increase in National Minimum Wage
Non-staff costs	[35]%	We increase this element of your Fee by the same as [Consumer Price Index plus Housing (CPIH)].

For example, where your Fee is £1,000 per week and the National Minimum Wage has increased by [5]% and [Consumer Price Index plus Housing (CPIH)] has increased by [10]%, your new Fee will be £[1,067.50] week.

TYPE OF COST	% OF YOUR TOTAL FEE	HOW WE CALCULATE THE INCREASE
Staff Costs	[65]%	[[65]% of £1,000 = £[650] £[650] × [1.05] = £[682.50]
Non-staff costs	[35]%	[[35]% of £1,000 = £[350] £[350] × [1.10] = £[385]
New Total		£[682.50] + £[385] = £[1,067.50]

This equates to an increase of £[3,510] over the year.

You can find a link to recent percentage changes in [CPIH] from the Office of National Statistics at <https://www.ons.gov.uk/> or by asking the Home Manager.

We will write to you by [DATE] to confirm the changes arising from our annual review and the new rates which will apply from [DATE] each year. This review is separate to any change in your Fee which occurs because of a change in your individual care needs.

**Example 4** enables you to demonstrate that the fee increase is based upon the external cost pressures which apply to each element of the fee. The key is that any index you use should be capable of independent clarification.

You should give residents examples of how the fees have been increased in recent years and what the contributing factors were to those increases, for example changes to national minimum wage, national living wage and increased pension contributions.

To make sure this term deemed to be is fair and reasonable, you will need to draw the resident's attention to it and highlight it at the start of your contract. You should also reference it at the first point of contact.

You should give residents enough notice before the increase takes effect so that they are able to terminate the contract (without penalty) if they do not accept the higher fee. In all cases, you should give residents at least 28 days' notice of the increase.

## Model Clause - Increases to Reflect Unexpected Changes in the Law

You can pass on the cost of unexpected and significant costs to the resident. However, these can only be charged where they have not already been incorporated into your annual review. You should also be able to explain to the resident what constitutes a "significant increase" in your costs.

We may also increase the fee by a fair and reasonable amount where a significant and unexpected change occurs in the law or the regulation of the home which results in a significant increase in our costs. This increase will only occur if it was not already captured as part of our annual review. We will give you at least 28 days' notice of such change.